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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/724,487	11/28/2003	William Thomas Vogt	14715/03US7007	1038
47626 7590 03/27/2008 SHELDON MAK ROSE & ANDERSON 100 East Corson Street Third Floor PASADENA, CA 91103-3842				
EXAMINER				
ADDRESSEE, SARA				
ART UNIT		PAPER NUMBER		
3722				
MAIL DATE		DELIVERY MODE		
03/27/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/724,487

Applicant(s)

VOGT ET AL.

Examiner

SARA ADDISU

Art Unit

3722

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/12/07.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

This Office Action is in response to the amendment filed 12/12/07. Currently, claims 1-16 are pending in this application. .

Specification

1. The abstract of the disclosure is objected to because it is in claim format and contains legal phraseology, e.g. "comprised".. Correction is required.
See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- claim16 recited "a shipping device prepared by the method of claim 4 or 15". It is not clear to the Examiner how claim 16 further limits claims 4 and 15. Applicant is advised to include the language of claims 4 or 15 into claim 16.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3722

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strong et al. (USP 5,150,971) in view Marlin et al. (USP 6,505,740).

Regarding claims 1-8, 10, 15 and 16, Strong et al. teaches a sealing envelope/shipping device/sealable device having a laminate of an outer layer (310: which can be paper or cardboard), an inner polymeric, water resistant, substantially transparent layer (330) and a metallic water resistant substantially non-light transmissive middle layer (320, e.g. aluminum foil) ('971, figures 3 & 4 and col. 4, lines 1-24). Furthermore, Strong et al. teaches the outer layer has an outer surface which can be pre-printed with information typically imprinted on mailing envelopes ('971, col. 4, lines 15-20). Regarding claims 11-14, Strong et al. discloses the claimed invention (i.e. envelop having a polymeric layer) except for having an additional polymeric layer between the outer and middle layer. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include an another polymeric layer to further protect/seal the outer layer with the mailing information indicia from accidental leakage of the content inside the envelope, because it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. Please note, the phrase "a sealable envelope for shipping biohazardous material" (as

Art Unit: 3722

claimed in claims 1 and 14) is considered to be intended use because the envelope of Strong et al. is capable of shipping biohazardous material.

However, Strong et al. fails to teach a printed biohazard warning on the inner layer.

MARLIN ET AL. teaches a package having an insertion region and a pouch region; formed from a laminate of the an outer layer (50), an aluminum foil (metallic) middle layer (58) and an inner polyester (polymeric) inner layer (64 and 62 as a unit) (please note: Examiner is redefining the layers) ('740, figure 3 and col. 5, lines 37-40). MARLIN ET AL. also teaches the inner layer having a printing (i.e. portion 62) on the inner surface of the inner layer facing the outer layer (50). MARLIN ET AL. also teaches the printing (62) having suitable coloring and indicia ('740, col. 6, lines 3-5). Furthermore, regarding claims 1 and 14, MARLIN ET AL. discloses the claimed invention (printed indicia) except for the specific arrangement and/or content of indicia (i.e. the indicia being biohazard warning) set forth in the claims 1 and 14. It has been held that when the claimed printed matter is not functionally related to the substrate it will not distinguish the invention from the prior art in terms of patentability. *In re Gulack*, 217 USPQ 401, (CAFC 1983). The fact that the content of the printed matter placed on the substrate may render the device more convenient by providing an individual with a specific type of indicia does not alter the functional relationship. Mere support by the substrate for the printed matter is not the kind of functional relationship necessary for patentability.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Strong et al. such that the inner surface of its inner layer has printing on it (such as biohazard warning), as taught by MARLIN ET AL. for the purpose of having communicating information with the user.

Response to Arguments

Applicant's arguments with respect to claims 1-16 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sara Addisu at (571) 272-6082. The examiner can normally be reached on 8:30 am - 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica Carter can be reached on (571) 272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Sara Addisu/

Examiner, Art Unit 3722

3/21/08

/Monica S. Carter/

Supervisory Patent Examiner, Art Unit 3722